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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/890,805

08/30/2001

Serge Restle

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6749

22852

7590

04/13/2009

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EXAMINER

SOROUGH, LAYLA

ART UNIT

PAPER NUMBER

1617

MAIL DATE

DELIVERY MODE

04/13/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/890,805	<b>Applicant(s)</b> RESTLE ET AL.	
	<b>Examiner</b> LAYLA SOROUGH	<b>Art Unit</b> 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24,27-49 and 51-76 is/are pending in the application.
- 4a) Of the above claim(s) 27-33,38-48,52-73 and 76 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24, 34-37, 49,51,74, and 75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

The response filed February 2, 2009 presents remarks and arguments submitted to the office action mailed October 2, 2008 is acknowledged.

Applicant's arguments over the 35 U.S.C. 103(a) rejection of 24, 34-37, 49, 51 and 74-75 over Vermeer (US 5880076 A) is not persuasive. However, the rejection of record is modified to address the newly added limitations.

The rejection is modified below to address the newly added limitations:

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any

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inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 24, 34-37, 49, 51 and 74-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vermeer (US 5880076 A).

Vermeer exemplifies a Shower Gel comprising Sodium Coconut Isethionate in 5-10 wt%, Sodium Ether Lauryl Sulfate 2-5 wt%, Glycacarbamate, Glycaurea or mixtures thereof (nonionic) 1-45 wt%, Coconutamidopropyl betaine 8-15 wt%, Ethyleneglycol Distearate (nonionic) 4-10 wt%, isopropyl palmitate (hair conditioning agent and emulsifiers/emollients (refatting agents) or dispersants useful in the personal product and detergent compositions) 0.5-1 wt%, Moisturizer 0.2-1 wt%, Preservative 0.05-0.1 wt%, Sodium Chloride 1-5 wt%, Water and Optional Ingredients to Balance.

The compositions of Vermeer are useful as mild cleansing, opacifying/pearlescent or suspending agents for personal product compositions and improved detergency on oily soils and stains.

Although, Vermeer teaches the hair conditioning agents at about 0% to about 10%, preferably from about 0% to about 8%, even more preferably from about 0% to about 6% by weight of the composition and the emulsifier or emollient are from about 0% to about 10% by weight of the composition, Vermeer

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fails to teach the specific amount of 1.2% to 8% or 1.5 to 8% of the ester as recited in claims 24 and 51.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to optimize the dose range of Vermeer's compound by routine experimentation (see 2144.05 11). The motivation to optimize the dose range of the Vermeer's final formulation is because one would have had reasonable expectation of success in achieving an optimal hair conditioning and emulsifying or dispersment properties useful in the personal product composition.

Additionally, the prior art teaches a similar composition as claimed, hence, absent evidence to the contrary, the limitation of "the composition being transparent with turbidity being less than 100 NTU" is rendered obvious over the teachings of Vermeer.

### ***Response to Arguments***

Applicant's arguments filed February 2, 2009 have been fully considered but are not persuasive.

Applicant's argues the transparency of the composition is less than 100 NTU. The Examiner states that this is a newly added limitation and is addressed above in the modified rejection.

With respect to the arguments that the modification of amounts is not obvious over the Vermeer reference, the Examiner points to Vermeer wherein the hair conditioning agents at about 0% to about 10%, preferably from about 0% to about 8%, even more preferably from about 0% to about 6% by weight of the composition and the emulsifier or emollient are from about 0% to about 10% by

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weight of the composition are taught. The broader teaching of the prior art encompasses the specified narrow range claimed.

The arguments are not persuasive and the rejection is made **FINAL**.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Layla Soroush whose telephone number is (571)272-5008. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the

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examiner's supervisor, Sreenivasan Padmanabhan, can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/SREENI PADMANABHAN/

Supervisory Patent Examiner, Art Unit 1617